

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**IN RE: JOHNSON & JOHNSON
TALCUM POWDER PRODUCTS
MARKETING, SALES PRACTICES
AND PRODUCTS LIABILITY
LITIGATION**

CIVIL DOCKET NUMBER:

3:16-md-2738-FLW-LHG

**STATUS CONFERENCE VIA
REMOTE ZOOM VIDEOCONFERENCE**

Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608
March 03, 2021
Commencing at 2:30 p.m.

B E F O R E:

**THE HONORABLE FRED A. WOLFSON,
CHIEF UNITED STATES DISTRICT JUDGE**

AND

**THE HONORABLE LOIS H. GOODMAN
UNITED STATES MAGISTRATE JUDGE**

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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1 (PROCEEDINGS held via remote Zoom videoconference
2 before The Honorable Freda L. Wolfson, Chief United States
3 District Judge, at 2:30 p.m.)

4 THE COURT: All right. Good afternoon.

5 RESPONSE: Good afternoon.

6 THE COURT: Okay. Who will be speaking today? If
7 you want to please place your appearances on the record. For
8 the plaintiffs' side?

9 MS. PARFITT: Michelle Parfitt, good afternoon, Your
10 Honor.

11 THE COURT: Good afternoon.

12 MS. O'DELL: Leigh O'Dell, Your Honor, good
13 afternoon.

14 THE COURT: Okay. And for the defendants? Oh, I'm
15 sorry.

16 MR. LAPINSKI: Your Honor, good afternoon. This is
17 Dan Lapinski for Motley, Rice.

18 THE COURT: Okay, thank you. Where are you? Are you
19 on a phone?

20 MR. LAPINSKI: Yes, Your Honor. I don't have
21 computer access right now so I'm just on a phone.

22 THE COURT: Okay. That's fine. Thank you.

23 MS. SHARKO: Susan Sharko for the defendants.

24 MR. BERNARDO: Good afternoon, Your Honor. Also,
25 Rich Bernardo for the defendants.

1 MR. BEISNER: John Beisner for the defendants. Good
2 afternoon, Your Honor.

3 THE COURT: Good afternoon.

4 MR. LOCKE: Your Honor, Tom Locke for PCPC. Sorry
5 about the mask but there is some people in here now.

6 THE COURT: Okay. Imagine that, people. Okay.

7 (Laughter.)

8 THE COURT: All right. And I asked Katie O'Reilly
9 and I asked those from Judge Pisano's firm to be on the line
10 to listen in as to what we're doing and some continuity here.

11 So, obviously, we start with today, sadly,
12 remembering Judge Pisano -- whoever is talking, if you could
13 mute, please.

14 And you should know, too, we would have celebrated
15 today, today would have been Judge Pisano's 72nd birthday.
16 So, really, the whole thing is just too sad. Although his
17 wife has arranged for some of his friends and some of us to
18 gather on a Zoom for a toast for his birthday later this
19 afternoon. It really came out of nowhere for us.

20 So I wanted the e-mail sent to you though on Friday
21 night because I knew the grapevine had picked up the news and
22 the word was out there, and I didn't want you to hear
23 piecemeal from somewhere, and I wanted everyone to know at the
24 same time and hear it from our chambers what had happened and
25 that sometime this week we would get together. So today is

1 the day.

2 And so what I want to start by asking is, how much
3 work is left that's on the discovery aspects that needs to be
4 done? I know we had opened up the door to this whole
5 privilege review that had not happened, so that's one of the
6 things that has to be done, and that's immediate.

7 MS. O'DELL: Yes, Your Honor.

8 THE COURT: What else is there?

9 MS. O'DELL: Your Honor, maybe Michelle and I can tag
10 team on this, but certainly, the privilege issue which we're
11 beginning to address already and get ourselves organized on
12 that. There are depositions that are upcoming in March and
13 April. There may be some after that where there could be some
14 issues. But, from my perspective, I'm not thinking of other
15 major tasks that are discovery related, but I would defer to
16 Michelle and Chris Tisi, if something comes to their mind
17 that's slipping mine.

18 MS. PARFITT: And, Your Honor, just for a moment,
19 and, again, I'm very sorry to hear about Judge Pisano and the
20 fact that we're gathered today because of that.

21 But I would say this as well: We had the privilege
22 issue that's moving forward. Really, I'm not anticipating at
23 this moment in time events that would cause or need the
24 assistance of the Magistrate with regard to the depositions.
25 We are getting them scheduled. They have already -- one has

1 already taken place. So that's the good news. So we hope
2 that that can be a peaceful process.

3 So I really can't think of anything that would really
4 cause his office and your office right now at this time to
5 have to move more quickly on something.

6 Chris Tisi is on this, and I -- Chris, I would defer
7 to you as well, if there's anything in addition that perhaps
8 we are missing. But I think Leigh has really hit on the
9 issues for the plaintiff.

10 Anything can happen, as you know, Your Honor, but I
11 think that the efforts of the parties here are to try to keep
12 things moving with the least amount of disagreement that we
13 can, especially during this particular time.

14 THE COURT: We like that. Okay. That's great. Yes.
15 Chris, you had something you wanted to mention?

16 MR. TISI: Yeah, yeah. You know, Rich Bernardo and
17 myself had been speaking, and some of the discovery issues are
18 a little bit in flux. For example, there's a witness who we
19 thought we would want who has moved to China. We may need to
20 substitute some witnesses. And so I think we are working
21 through it. I don't want to say that the list that we
22 currently have is the final list. We're just kind of working
23 through it. But so far, you know, I think Rich would agree,
24 we're working together amicably to try to get things
25 scheduled, as well as being coordinated as best as we can with

1 other proceedings, to the extent that we can do that. And so,
2 you know, I didn't want you to think that there was this
3 finite group of issues. There may be some stragglers, but
4 we're working through it.

5 THE COURT: Okay. On the defense side, what's your
6 view?

7 MS. SHARKO: So, we appreciate the plaintiffs'
8 optimism.

9 There was also an issue with regard to grids, and
10 that was resolved as of about seven minutes ago, and we'll
11 send Your Honor a proposed consent order on that. But I would
12 defer to Mr. Bernardo, if there's anything else on the
13 horizon.

14 MR. BERNARDO: No, I concur with everything that's
15 been said.

16 And, again, let me express my sincere condolences for
17 the passing of Judge Pisano. And if it hadn't previously
18 motivated us all to try and work together and resolve things,
19 it's doing that here, and Chris and I had been working
20 together to try and get through this, and Leigh and I worked
21 together last evening to try and get through the Grids
22 protocol. There may be one small issue, and we'll just raise
23 that at the appropriate time that is residual from that, but I
24 don't anticipate it's going to be something we need to address
25 in the next week or two. But we've all been working together

1 and, hopefully, we'll continue to do that.

2 THE COURT: So a couple of things.

3 On the privilege log, how many documents or
4 categories of documents are we talking about that would have
5 to be reviewed?

6 MS. O'DELL: Your Honor, the suggestion that was made
7 by defendants was that we start with a group of 115 documents
8 that had been raised in other jurisdictions, and, Your Honor,
9 we were not aware of the identity of those documents until
10 probably an hour or so, maybe two hours before the conference.
11 We're going to look at them as well as others that we've
12 identified to see what the initial sort of group of documents
13 would be. I don't have a firm number. I can say that we're
14 going to try to be judicious in our approach and deal with
15 them by category so that there will be ease in the review and
16 coordination of the decisions on those documents.

17 So we're -- I can't give you a number, but I can tell
18 you we've gotten that, we're going to start there, and see if
19 there are additional documents to be added to that group.

20 MR. BERNARDO: And, Your Honor, we proposed the
21 number that Ms. O'Dell identified, and I shared with her a
22 list, and I apologize for not having sent it earlier. I
23 realized I was about to send it when we heard the news and
24 then we held off for a little bit, but we'll also send the
25 briefing.

1 We picked these documents because they really are
2 overlapping in all of the various jurisdictions and, in large
3 degree, a lot of the briefing has been done, so we thought it
4 was a very easy place to start.

5 Again, I'm committed to working with Ms. O'Dell and
6 others to try and see if we could coordinate this. And,
7 again, the identity and number of documents is beyond our
8 control, but we're trying to see if we can resolve them in the
9 spirit of compromise where we can and, hopefully, we can limit
10 the issues that have to get presented.

11 THE COURT: Okay. So I'm looking short term and long
12 haul, and that's why I wanted to get you on today, because the
13 first question is I was trying to figure out, what is ahead
14 that needs to be done? Do we need a substitute Special Master
15 or not?

16 You see Judge Goodman is on today, on Zoom. I spoke
17 with her earlier in the day. She was not too optimistic that
18 if I tried to send things her way, such as a privilege log,
19 that it would get done quickly unless I instructed her to do
20 no other work but that. I don't think that's quite fair,
21 since she works for all of the judges and not just myself.
22 So, because I thought if it was just some things coming along,
23 that maybe we could get by with bringing the Magistrate Judge
24 back in, but that may not be the case.

25 So what are your views? Do we need a Special Master,

1 particularly since we know that Judge Goodman would not be
2 able to quickly step in and give you and give us the kind of
3 quick turnaround that we knew that Judge Pisano was going to
4 do for us? Do we need a substitute Master then?

5 MS. PARFITT: Your Honor, I think that at least if I
6 can start from our side -- I hate to say it -- it depends. We
7 understand the innumerable obligations that you have as well.
8 You have heard us in the short term, what we have ahead. And
9 I think, you know, it does, I think -- I agree with Rich. I
10 think it forces the parties to pause for a moment and see what
11 they can and what they can't resolve because that's better for
12 the entire group. So I think we are trying that. But I think
13 as Your Honor recognizes, despite those good efforts on both
14 parties, sometimes you just come to an impasse. So the
15 question would be, we come to an impasse on something, where
16 do we go? We would come to you, but we also realize the
17 burdens that you have.

18 So I think we are looking for guidance, and I want to
19 hear from others on our side. We didn't know exactly, Your
20 Honor, what your approach would be today, and whether it would
21 be to -- just what your ultimate decision would be, and we'll
22 abide by that.

23 So I hate to say "it depends" but there are times
24 when there is a flurry of activity, things can't get resolved,
25 and then they are times where we seem to peacefully move along

1 at a good pace and get done what we have to do. We're
2 motivated to work together. I think that's what you charged
3 us to do, you know, four years ago. But that's -- and that's
4 a good charge.

5 So I don't know. I defer to -- Leigh, if you've got
6 other comments on that, is it something that we have someone
7 available, if we need it? It's a tough call for us. Leigh?

8 THE COURT: Yes.

9 MS. O'DELL: Your Honor, I would say the same thing.
10 I think the privilege issue is going to take some time, and so
11 that's just one comment I would have. It's hard to say about
12 the other issues that remain. I think they would be hit or
13 miss. But we recognize, you know, that the Court is very busy
14 and so it's a little hard to say. But if you ask me to lean
15 one way or the other, I would say we probably needed a
16 substitute because of the nature of that project.

17 MS. PARFITT: What we don't want to do is be in a
18 position where we suddenly have a problem and Your Honor and
19 Judge Goodman -- and good afternoon, Judge -- that you are
20 both tied up, and then we have an issue or a period of time
21 where something can't get done. So, you know, you hate to not
22 create your own problems, but there are a few things that will
23 necessitate time, and I don't know whether it makes sense to
24 introduce us to someone so, in the event a problem does occur,
25 we have someplace to go, rather than appear on your doorstep.

1 I know you'd welcome us, but, you know, I know that we're not
2 always the people you're expecting to be on the other side of
3 the door. So --

4 THE COURT: Yes.

5 MS. PARFITT: -- it may make some sense to think
6 about it, if nothing else, about what we need to do.

7 THE COURT: Well, I think -- and I'll hear from
8 Ms. Sharko, too.

9 I guess my immediate concern is the privilege log. I
10 mean that's the time-intensive activity. I think other
11 things, you know, such as if something came up in the context
12 of, okay, this deposition and what should we do with it and we
13 object and where should we take it, that is the kind of thing
14 I think that Judge Goodman could pick up and handle. I'm more
15 concerned with something that could be time intensive on a
16 privilege review.

17 So, Ms. Sharko?

18 MS. SHARKO: I think in fairness to Your Honor and to
19 Judge Goodman, we should have someone else appointed, given
20 the state of the court system. You two just have so much on
21 your plates.

22 I think the parties seem to be motivated,
23 particularly in the last few days, to really try and knuckle
24 down and work together. I know I have had those conversations
25 with Leigh and Michelle on other case management orders. But

1 the reality -- the reality is that we're starting to prepare
2 cases for trial, and I think issues are going to come up.

3 A short-term solution, until somebody's appointed, I
4 think if Judge Pisano's able colleagues are able to provide to
5 Judge Goodman the assistance that they provided to Judge
6 Pisano, that might be helpful, but in the long run, I think it
7 would be better to have someone appointed.

8 MR. TISI: Judge --

9 THE COURT: By the way, I had raised that with Judge
10 Goodman this morning, would it make a difference if we had
11 Katie O'Reilly, continue on with her, as she had with Judge
12 Pisano, but I think her view is still the time that she has to
13 put in. Yes, does that help chambers in the sense that her
14 law clerk isn't involved or something? Yes, but I think she
15 still thought that was a burden to her.

16 Frankly, I would like, too, that if we do do a
17 substitute Special Master that perhaps we could have
18 continuity with that person working with Katie so that we
19 continue that so I'm not recreating the wheel, and, certainly,
20 she knows what went on.

21 But I think you're back to, Susan, the same problem,
22 which Judge Goodman's view is -- and I will let her speak for
23 herself. Go ahead.

24 MAGISTRATE JUDGE GOODMAN: Well, listen, I love
25 working with you all, and I've missed all of our discussions,

1 but when Judge Wolfson raised it, my reaction was there is no
2 vacuum to slide you into if you have an emergent need to get a
3 decision quickly. And I would very much appreciate it, if it
4 came onto my plate, having the assistance of Kate O'Reilly,
5 certainly, but at the end of the day, decisions are mine, and
6 it would not and could not be done without my putting in the
7 work on it. And, as Ms. Sharko said, there just isn't enough
8 time in the day, and we're being pulled in many directions.

9 That said, if the decision were not to have a
10 replacement Special Master, I would make myself available,
11 absolutely. But is it the easiest thing in the world right
12 now? No. So that's where I come out.

13 THE COURT: Okay. So, not my job to make Judge
14 Goodman's life more difficult.

15 MAGISTRATE JUDGE GOODMAN: And I appreciate that. I
16 appreciate the consideration.

17 THE COURT: Yes. That's why I spoke to her before
18 getting you all on the line. I didn't want to put her on the
19 spot without having talked to her first.

20 So I think what we should do is we should get someone
21 on board, with the understanding that this is coming in where
22 we're not at square one. There isn't going to be as much work
23 as somebody might anticipate in a large MDL Special Master, so
24 they're not seeing the big pot of gold for themselves, and
25 that's fine. But that someone who could jump in very quickly

1 to deal with privilege questions and then be available as
2 needed, as things arise.

3 To do that, I don't have someone ready for you in
4 mind. And I've given it a lot of thought over the last
5 several days, and even reached out to one or two people that I
6 thought would be good, and also trying to mix it up a little
7 bit on bringing some new people in, kind of diversity, talked
8 to a couple of women, and no luck.

9 So, I would be happy to take from you -- what I would
10 like is, if you can confer with each other, since you're now
11 in this very collaborative mode, and if you can agree on
12 someone, great, or if you want to provide to me a couple of
13 names, don't designate or delineate if it's a plaintiff or
14 defense choice. I don't want to know who put that name on
15 there. You can give me, if you can't agree, why don't we say,
16 three, four names, and then I'll select one of them.

17 MS. PARFITT: All right. And so I understand, Your
18 Honor, collectively, the parties come up with a total of
19 three, four, or three, four each and put them --

20 THE COURT: No, total. Let's say four then, so you
21 can give me two each, but don't tell me who is plaintiffs'
22 selection and who is defense.

23 MS. PARFITT: Understood.

24 THE COURT: Although it may not be shocking to me to
25 try and figure out who it is.

1 MS. PARFITT: Okay.

2 THE COURT: But I will make my own determination,
3 and --

4 MS. PARFITT: Very good.

5 THE COURT: -- we will go from there.

6 MS. PARFITT: When would you like that, Your Honor?

7 THE COURT: Well, how quickly do you think -- in the
8 first instance, I would like you to discuss it with each other
9 so maybe you'll reach agreement and you don't have to give me
10 a list. But what do you think? A week? Two weeks? A week?
11 You can do that?

12 MS. PARFITT: A week.

13 THE COURT: I would like to move it along because
14 that privilege issue is going to come about and we have to
15 educate someone pretty quickly. And I know she's on the
16 phone, but not to put anyone on the spot, it sounded like
17 you'd all be agreeable, though, that if Katie is willing and
18 the Master is, that Katie could work with that Special Master,
19 rather than the Special Master trying to bring in another
20 associate from a firm or somewhere else to do it, right?

21 MS. PARFITT: Okay.

22 MS. O'DELL: That's fine, Your Honor.

23 THE COURT: Good. Katie, you're willing?

24 MS. O'REILLY: Of course.

25 THE COURT: Okay.

1 MAGISTRATE JUDGE GOODMAN: Thank you, Katie.

2 THE COURT: And the other reason I say that, too, is
3 because if you also select someone who may not be affiliated
4 with a firm, I know I've raised this with you before, I like
5 Special Masters that are with a law firm because then they
6 have people that can help them and work with them. But we
7 eliminate that problem if we have Katie on board, so that you
8 could select someone that may not be in a law firm, that's
9 with a JAMS or with some other group or whatever, on their own
10 doing something, because that person can get the back-up help.
11 So now I'm not as limited in suggesting it's somebody with a
12 firm.

13 And keep in mind when you do, not somebody that we
14 know is so overloaded and gets all these cases so that they're
15 not going to jump on this one. I want someone who is going to
16 give us the attention that it requires.

17 I mean, that was one of the things that was great
18 about Judge Pisano. He made known, and he did, he jumped on
19 anything as it came, as you all know. So I don't want to make
20 Katie sad. I can see that today. But, you know, I mean, you
21 know, it's one of the things we loved about him and respected.
22 So, I don't know that you're going to find another Judge
23 Pisano. There's only one. I think even we'll use the word,
24 though -- I love this, because I was talking to Liza Walsh
25 yesterday about him, and we said the word, he was quirky but

1 we loved it about him. All parts of him, you know? So he was
2 special.

3 So, anyway, so keep that in mind as you come up with
4 a name, too, someone that we know will give us the attention
5 and move on it.

6 Okay. So next week you'll get us a name and we'll go
7 from there.

8 I saw that you sent in an order with regard to
9 selection of case-specific discovery for Stage Two cases.
10 Right?

11 MS. SHARKO: Yes.

12 THE COURT: I got that. And then discovery of Stage
13 Three cases. And just taking a quick look at this before we
14 got on the phone, I did see that it takes us out to expert
15 deps through December 3rd of 2021, and so through the year,
16 and to some extent, good, because I'm hoping by 2022 we can be
17 looking at civil cases such as yours, and I will make this
18 civil case a priority once we turn to civil cases, so I do
19 want to let you know that. I want to get to a bellwether
20 trial. So, as I said to you, cleaning up the criminal is our
21 first job. But when we get to civil, once you're ready, I am
22 going to try and move you.

23 MS. O'DELL: Thank you.

24 MS. PARFITT: Thank you.

25 THE COURT: I think that timing works is what I'm

1 trying to say. None of us knows for sure where we are all
2 going with COVID over the year. Things are looking better.
3 And I'm hoping that we are going to start on a limited basis
4 picking up trials in the not distant future and start those
5 criminal cases, with the hope that nothing bad happens as a
6 result of that, and that we move ahead. So good. That
7 schedule looks good for me.

8 So thank you all. And I thank you for your
9 expressions and I think your sensitivity to where Katie and I
10 and Judge Goodman are right now.

11 MS. PARFITT: Thank you, Your Honor.

12 THE COURT: Okay? So really do appreciate it.

13 So everyone be well. We have another date, right?
14 We set a date at some point? The end of March, right? I
15 think it was March --

16 MS. SHARKO: March 31.

17 THE COURT: March 31. Is that still good, or based
18 upon what we're doing, do you want to carry that a little more
19 into April?

20 MS. SHARKO: I think that's perfect, and we can keep
21 that as we build the schedule that we sent in.

22 THE COURT: Okay. If we have any issues about what
23 we just discussed today and the Special Master, you guys were
24 terrific, we did it all in the same day, got you on a Zoom, as
25 long as it's Zoom and I guess you're not off doing something

1 else, we can do these pretty quickly, so that's great.

2 Judge Goodman thanks you.

3 MAGISTRATE JUDGE GOODMAN: Yes.

4 MR. TISI: Good to see you again.

5 THE COURT: Yes, we do. I know she's interested in
6 the case. Not that she doesn't like you.

7 MAGISTRATE JUDGE GOODMAN: Well, there aren't many
8 cases that I would go to the *Daubert* hearings just to watch,
9 so that was something special, so the case is interesting.

10 THE COURT: Yes, that's great. Okay, everyone. Take
11 care and --

12 MS. PARFITT: You as well.

13 THE COURT: -- if we don't have something in between,
14 I'll see you on March 31. Thanks, everyone.

15 (The proceedings concluded at 3:02 p.m.)

16 - - - - -

17
18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled matter.

20

21 /S/ Carol Farrell, NJ-CRCR, FCRR, RDR, CRR, RMR, CRC, CRI
22 Court Reporter/Transcriber

23 March 04, 2021
24 Date

25

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